GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the workmen and the management of M/s. Motor Industries Co., Ltd., P.B. No. 93, Bangalore-1.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

(1) Letter No. 596—67-68, dated 23rd August 1967 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 23rd day of August 1967.

Present :

SRI P. T. KADKOL, B.SC., LL.B.,
Presiding Officer.

Reference No. 66 *of* 1966.

Workmen represented by the Secretary, MICO Employees' Association, Audagodi, Bangalore-2 .. 1 Party

Vs.

The Management of M/s. Motor Industries Co., Ltd., P.B. No. 93, Bangalore-1 .. II Party.

Reference : Government Order No. LMA 190 LLD 66, dated 23rd May 1966.

AWARD.

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s.

Motor Industries Company, Ltd., Bangalore have referred it for adjudication to this court under Section 10(1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 190 LLD 66, dated 23rd May 1966 setting out the following points of dispute for adjudication :—

"I. Is the Management of the Motor Industries Co., Ltd., Bangalore-1 justified in terminating the services of Shri J. V. Narayanan, Assistant in the Labour and Welfare Department of the Concern ?

II. If not, to what relief is Shri J. V. Narayanan entitled to ?"

2. The cause of the aggrieved workman Sri J. V. Narayanan has been sponsored by the MICO Employees' Association, Bangalore. It is a registered Trade Union. This Union, as representing the Workmen, is the First Party and the Management of the Motor Industries Co., Ltd., (hereinafter referred to as MICO Factory), Bangalore, is the Second Party in this proceeding. Advocate Mr. Krishnaiah has appeared for the Union and Mr. B. R. Puttananjappa, Secretary, Mysore State Employers' Association has appeared for the Management.

3. Some of the admitted facts are these :—

4. The Management of the MICO factory invited applications for the post of an Assistant in its canteen, through an advertisement in the "Hindu" newspaper, in October 1962. Narayanan (the aggrieved workman) applied for that post by his application dated 23rd October 1962 (*Vide* Ex. M. 1). He was interviewed by the Management and was appointed as an "Assistant in the Labour and Welfare Department" with effect from 24th November 1962. He was informed that he was "responsible to look after the Canteen". A letter of appointment was issued to him on 4th December 1962 (*Vide* Ex. M. 2) and he was informed that his appointment was subject to all the terms and conditions set out therein and he should signify his willingness, by signing on the duplicate thereof. Applicant signified his consent. He was started on a salary of Rs. 260 p.m. all inclusive.

5. The MICO factory works in four shifts. One is called the General Shift and the others are the first, second and third shifts. The factory canteen works all the 24 hours of the day. The working hours of the shifts are :—

1. General Shift .. 8 A.M. to 4-30 P.M.
2. First Shift .. 6-15 A.M. to 2-45 P.M.

3. Second Shift .. 12 NOON to 8-30 P.M.
4. Third Shift .. 7 P.M. to 3-30 A.M.

Narayanan was attached to the General Shift. His working hours were 7 A.M. to 4-15 P.M. on week days and from 7 A.M. to 11-15 A.M. on Saturdays. (*Vide* R.W. 2).

6. The MICO factory runs a kitchen and supplies free meals to all its employees, by way of lunch from 10 to 10-30 A.M. for first shift employees and from 11-45 A.M. to 12-15 P.M. and 12-45 P.M. to 1-15 P.M. for two batches of the General Shift and by way of dinner from 7 P.M. to 7-30 P.M. for the second shift employees. Besides this, it also supplies, against payment. break-fast, snacks, tea, etc., at different times to all employees. In the night from 11-30 P.M. to 12 MID-NIGHT, it supplies free milk for the third shift employees (*Vide* R.W. 2).

7. The responsibility of arranging for the lunch, breakfast and snacks during his working hours, was on Narayanan.

8. Under the appointment letter Ex. M. 2, Narayanan was appointed on probation of one year. He was promised a revision of salary at the end of six months, if he was found suitable in all respects. He was confirmed in his post on 1st June 1963 and put in grade C2, which has a prescribed time scale of pay. On 1st July 1963 he was informed by the letter Ex. W. 4 that his pay was fixed at Rs. 312 p.m. from 1st June 1963. On 19th August 1964, he was informed that his pay was raised to Rs. 338 p.m. with effect from 1st August 1964 (*Vide* Ex. W. 3 and Ex. M. 3/2). Then on 19th August 1965 he was informed that his pay was raised to Rs. 402-50 P, with effect from 1st August 1965 (*Vide* Ex. W. 2 and Ex. M. 3/1). Finally on 6th November 1965, his services were terminated (*Vide* Ex. W. 1 and M. 4). The Order of termination runs as under :—

> "This is to advice you that we do not require your services with effect from the close of 6th November 1965. You will be paid one month's salary in lieu of notice along with your other dues in final settlement of your account."

9. Naturally, Narayanan resented his termination and approached the first party Union. He also issued a pamphlet (Ex. M. 6) by way of an appeal on 15th November 1965, and sought the "moral support" of the other employees. The Union addressed a letter to the Management on 11th November 1965 (Ex. M. 5)—after it had a discussion with the Management, on

the previous day—condemning the termination of Narayanan as "unjust and illegal" and demanding his reinstatement. The Management gave a reply to the Union on 16th November 1965, and it is at Ex. M. 7. An alternative job was offered to Narayanan by the Management. But Narayanan and the Union did not accpet it, as it carried a lesser pay than what Narayanan was drawing then. The negotiations failed. Thereafter conciliation proceedings were held and they too failed. Hence the present Reference has been made by the Government.

10. The First Party Union has submitted its statement of claims dated 19th July 1966. It has averred therein :—

> The termination of the services of Narayanan is *mala fide*, opposed to law, unjustifiable and is a glaring instance of unfair labour practice ; the running of the canteen was by no means the sole responsibility of Narayanan ; he was only required to assist, to the best of his ability, in the day-to-day running of the canteen, having nothing to do with the policy matters ; the Management was keen to get rid of Narayanan in order to appoint another person, which it has done since ; hence the order terminating the services of Narayanan passed by the Management, be set aside and he be directed to be reinstated with full back wages and continuity of service, etc.

11. The Management has put in its statement of objections. The contentions raised by it are :—

> Narayanan was placed in charge of the Canteen and made responsible for the day to day running of the same ; this fact has been made clear in his letter of appointment itself ; his duties were supervisory and he had to look after the smooth and proper running of the canteen ; some of his main duties were to requisition all the necessary provisions, make proper preparations of the items, look after serving them timely to the employees and also the maintenance of cleanliness ; he was also required to attend to the complaints in the canteen ; but during the time when he was in charge he gave room for various complaints on several occasions and did not improve inspite of leniency shown by the Management ; as oral warnings had no effect on him, the Management had to postpone his increment for two months in 1964 and twice in 1965, on account of his unsatisfactory work ; hence the Management finally decided that there was no use in

retaining him as an Assistant in charge of the canteen and terminated his services in the interest of the employees themselves ; when the union officials took up the cause of Narayanan and discussed the matter with the Management, want of ability and capacity on his part to be in charge of the canteen, was never the bone of contention between the two parties ; the Management gave two alternatives to him purely on humanaterian grounds ; by one he was asked to accept another job commensurate with his qualifications and ability, on the salary fixed for that job ; the other was to continue in service till the end of December 1965 find out another job in the meanwhile and tender his resignation ; the Union did not insist on his being retained in the canteen but on his being provided with an alternative job without reduction in his emoluments ; the Management could not accept this proposal of the Union ; the Management has passed the order of termination of his services, *bona fide ;* the Management denies that it was keen on getting rid of him to appoint another person on a high salary in his place ; hence this Reference be rejected etc.

12. The First Party Union has submitted its rejoinder to the above statement of objections. Therein it has reiterated the averments made by it in the claim statement and added :—

> Narayanan had to discharge his duties under severe handicaps ; even the smallest work or purchase could be effected "only after a lot of red-tape" ; he was not allowed any individual initiative and most of his work was required to be done after seeking permission and instructions from superiors ; in name only he was a supervisor and in practice a mere helper ; the Management's contention that he was "incapable of performing the task alloted to him" is untenable ; his services are terminated with the sole purpose of bringing another officer on a high salary in his place, on some flimsy pretext, which is highly *mala fide ;* hence this reference be accepted etc.

13. In reply to a querry made by the Court, the Management has submitted the memo dated 1st October 1966 as under :—

> The Second Party submits by way of clarification that the termination of the services of Sri J. V. Narayanan by the second party management by its order dated

6th November 1965 was an act of termination simpliciter in the *bona fide* exercise of its Managerial functions under the terms of employment and the provisions of the certified Standing Orders, Rule 17, applicable to the establishment."

14. On these pleadings, the following additional issues have been framed (*Vide* Order sheet dated 1st October 1966) and set down for hearing :—

1. Whether the termination of the services of the aggrieved workman by the Management of the second party under Standing Order No. 17 (1) *mala fide* or punitive in nature ?

2. Is the aggrieved workman entitled to reinstatements with or without back wages and continuity of service or to any other relief ?

Parties were asked to lead evidence on these issues and they have done so. The First Party has examined the aggrieved workman Narayanan (W.W. 1) and produced the documents marked Exts. W. 1 to W. 15. The Management has examined two witnesses (M.W. 1 and M.W. 2) and produced the documents marked Exts. M. 1 to M. 19. This is all the evidence in the case. I now proceed to consider the first issue.

15. From the pleadings set out above, it is evident that the services of Narayanan have been terminated by the Management of the Second Party without levelling any charges against him and without holding any domestic enquiry. The case of the Management is that Narayanan's termination is a discharge simpliciter, being an essentially management function, under Standing Order No. 17 (1) of its certified Standing Orders. A copy of the certified Standing Orders has been produced and marked in evidence at Ex. M. 16. That Standing Order reads as under :—

"The employment of any permanent monthly rated employee can be terminated without assigning any reason by giving one month's notice or by payment of wages at the basic rate of pay for one month in lieu of notice irrespective of the length of service of such employee with the Company."

Admittedly, Narayanan was a monthly rated permanent employee. In the latter of appointment (Ex. M. 2), he has been informed that he would be governed and shall abide by the

Standing Orders of the Company in force from time to time and he has accepted service subject to this condition. So, it followes that the Management had a right to proceed against Narayanan under the above Standing Order if facts or circumstances demanded it. The Union also has not challenged this right of the Management. So far as the certified standing orders are concerned, the legal position is quite clear. Certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on both parties, at least as much, if not more, as private contracts, embodying similar terms and conditions of service. They form part of the contract between the Management and the Employees. They take the place of service rules relating to Government Servants. The authorities in support of this proposition are :—

1. 25 F.J.R. 25 (S.C.)—Buckingham and Carnatic Co.. Ltd. *Vs.* Venkatiah.

2. A.I.R. 1959 Mad. 479—Mettur Industries Ltd., *Vs.* A. R. Verma.

3. A.I.R. 1959 Patna 481—Bihar Journalis Ltd. *Vs.* Ali Hassan.

It is thus clear that the Management of the Company (MICO factory) had every right to terminate the services of Narayanan in exercise of its managerial functions under Standing Order 17 (1). So far as the wording of the termination order of Narayanan goes, it is purely a discharge simpliciter.

16. But numerous decisions in point have laid down that the words employed in the impugned order are not a conclusive proof of the nature of the Order. If such an order is challenged by the concerned employee, the Industrial Court has not only the right but has also the duty to examine the order in all its aspects, the circumstances, if any, that led to the passing of that order and find out whether it has been passed in *bone fide* exercise of a managerial function or the Management has acted *mala fide* or with a spirit of victimisation. The Court is also required to find out whether the impugned order is punitive in nature, or amounts to an unfair labour practice on the part of the Management. In other words, the court is required to find out whether it is only a colourable exercise of a management function, being adopted as a short cut, o deny fair play, justice and benefits of principles of natural justice to the employee, in order to camouflage its real intention and ulterior motives. I narrate below some of the leading decisions in point.

17. In Murugan Mills Ltd. *Vs.* Industrial Tribunal (1965-I LLJ 422), the Supreme Court has observed :—

> "The right of the employer to terminate the services of the workman under the Standing Orders by giving a notice or by paying him wages in lieu of such notice, which amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negative security of service which has been secured to industrial employees through industrial adjudication was considered by the Labour Appellate Tribunal in 1951-2-LLJ 314 and the view taken therein has been approved in the decision of the Supreme Court, in 1960-2-LLJ 222 and 1962-I-LLJ 374. Even in such a case, the requirement of *bona fides* is essential. If the termination of service is a colourable exercise of power or as a result of victimisation, or unfair labour practice the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the Tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the termination was a cilourable exercise of power or was a result of victimisation or unfair labour practice."

Similar principles have been laid down by the Court in Ahmedabad Sarangpur Mills case (1965-I-LLJ 155).

18. In Assam Oil Co., Ltd. *Vs.* Its Workmen (1960-I-LLJ 587), the Supreme Court has held that even where, under the contract of employment or the Standing Orders the employer is empowered to discharge the workman merely by giving notice and the order of discharge purports to be made in exercise of that power, it is competent to the Tribunal to enquiry into the actual facts of the case ; if the Tribunal finds that the action taken was in substance and effect, not discharge simpliciter, but removal from service by way of punishment for some imputed misconduct or incompetence, it is a case of punitive action and if the order is not preceded by a regular domestic enquiry, the discharge is wrongful and the Tribunal must interfere.

19. In Chartered Bank, Bombay *Vs.* Charted Bank Employees' Union, (1960-2-LLJ 722), the Supreme Court has made similar observations. It has further observed that it is competent to the Tribunal to enquiry into the actual facs of the case and for that purpose to call upon the employer to disclose all the circumstances

which led to the order. Then it has observed that if the Tribunal finds that the action taken was in substance a result of victimisation or unfair labour practice or a punitive measure for some misconduct, it must interfere and revise the order.

20. In V. B. Dutt & Co. *Vs.* Its Workmen (1962-2-LLJ 374), the Supreme Court has held that it is competent to the Trbiunal to enquire into the merits of the case and the employer cannot claim that he has unfettered right to terminate the services of an employee which the Tribunal has no right to interfere with. In this case, the Supreme Court has reaffirmed the principles laid down by it in the Assam Oil Company case and the Chartered Bank case, mentioned above.

21. The latest decisions of the Supreme Court on this point is the one reported in 1966 (2) LLJ 602 (Tata Oil Mills Company, Ltd. *Vs.* Their Workmen). In this decision, the Supreme Court has relied on and reaffirmed the principles ennunciated by it in Chartered Bank case and UU. B. Dutt & Company case and added :—

> "The test always has to be whether the act of the employer is *bona fide* or not. If the act is *mala fide* or appears to be a colourable exercise of the powers conferred on the employer by the terms of the contract or by the Standing Orders. then, notwithsanding the form of the order, the Industrial adjudication would examine the substance and would direct re-instatement in a fit case."

22. Then with regard to proof or otherwise of the *bona fides* or *mala fides*, is has been laid down in Orissa Cement Lt., *Vs.* Their Workmen (1960-2-LLJ 91) that it is for the party alleging *mala fides* to lead evidence in support of the said plea. This is also a decision of the Supreme Court (*Vide* Industrial Disputes Act by Vittalbhai Patel, 1963 Edition, Page 582). A finding of *mala fides* or victimisation has to be based on evidence along (*Vide* 1963-2-LLJ 429 (S.C.), Anand Bazar Patrika *Vs.* Their Employees).

23. The evidence led by the parties in this case, requires to be assessed keeping in mind, the principles laid down by the Supreme Court, in the various decisions cited above. I have mentioned above that the Management of the Second Party had every right to terminate the services of Narayanan, under Standing Order 17 (1), at Ex. M. 16. The question is whether this act of the management is *bona fide* or *mala fide*.

24. I start with the pleadings. In the claim Statement, the Union has alleged that the termination of Narayanan is *mala fide*, opposed to law, and unjustifiable and is a glaring instance of unfair labour practice (*Vide* Para 1). Then at the end of para 4, it has alleged that the Management was keen on getting rid of Narayanan and employ somebody else.

25. The Management has averred in the Statement of objections that it was highly regrettable that during the time Narayanan was in charge of the canteen, he gave room for various complaints on several occasions and there was no improvement in spite of the leniency shown by the Management and since the oral warnings did not have any effect on him, the Management had to postpone his increments for two months in 1964 and twice in 1965, for unsatisfactory work (*Vide* para 4) and so, Narayanan had to be terminated in the interest of the employees themselves (*Vide* Para 2). The case of the Management appears to be that Narayanan is incompetent or incapable of managing a canteen of such magnitude as the one run by it.

26. In the rejoinder, the Union has specifically alleged (*Vide* Para 7) that Narayanan's services were terminated with the sole purpose of bringing another officer in his place, on a high salary.

27. If as alleged by the Union, the services of Narayanan were terminated by the Management in order to make room for another officer, then the act of the Management would certainly be *mala fide* and the order passed by it, shall have to be set aside. If on the other hand, Narayanan was incompetent or incapable of managing the Canteen, then we shall have to consider the further question whether the act of the Management is punitive in nature, or a *bona fide* act of Management function.

28. In the claim statement it has been alleged that when Narayanan entered service, the number of employees required to be catered in the canteen was 1,500 and when he was terminated, it was 3,500. The corresponding figures given by the Management are 2,553 and 3,559. It is clear that the requirements of the canteen were enlarging and the work-load of Narayanan was considerably increasing during the period of his service.

29. The head of the Canteen Department was Sriram Sharma (M.W. 2), in his capacity as the Labour Welfare Officer of the MICO factory. He had to attend to many activities and attending to the canteen, was one of them. The official next to Sharma (M.W. 2) was Narayanan himself. Under Narayanan were three officials, by name Bhaskar Nair recruited in February 1963,

Achutan recruited in August 1964 and Muthu recruited in July 1965. They mere called "Service Assistants." There were no service assistants, when Narayanan joined in November 1962. So. we find that the Management was alive to the gradual increase in the work load and was giving assistance to Narayanan in proportion thereto. The three Service Assistants were attached to the three shifts (one for each shift) and Narayanan was attached to the General Shift. During his work in the general shift, Narayanan had the assistance of the Service Assistant of the first shift for some time and of two service Assistants for the rest of the time, as can be gathered from the shift hours. Then, for each shift, there used to be some service boys and helpers for serving and cleaning. Considering the heirarchy of the officials in the canteen department. It would be clear that Narayanan was wholly responsible for the smooth running of the Canteen, with service assistants, serving boys and helpers to help him. It was his duty to indent for the food articles from the Stores and he was doing it as can be seen from Exts. M. 8 and M. 9. It was his duty to see that cooked food was kept ready for servce, in time. It was also his duty to supervise all the arrangements connected with efficient catering in the cantteen. Some statements made by Narayanan in this connection, may be noted. He has stated.—

> I used to be present personally supervising the servers and helpers when meals used to be served (Para 35). The Canteen used to serve breakfast in the morning and snacks in the evening..I used to supervise the serving of the breakfast..The snacks served from 1 P.M. to 1-30 P.M. at the counter used to be supervised by me (Para 36)..Except looking after the canteen, I had no other work in the factory. The clerk attached to the canteen used to do the writing work (Para 50).

From these statements made by Narayanan it is evident that his duties were exclusively supervisory as asserted by the Management. He was holding a responsible post with a number of subordinates under him. For all practical purposes, he was the head of the canteen section. Below the leave applications of two employees (*Vide* Ex. M. 11 dated 23rd August 1965 and 20th August 1965) he has signed as the head of the department, with a remark on one of them "absented without intimation". He was asked to give a confidential report regarding Service Assistant Muthu and he has done so on 31st May 1965 (*Vide* Ex. M. 10). In Ex. M. 10 he has said that he had kept constant supervision over the work of Muthu and his work was statisfactory. On 24th December 1964 and 3rd May 1965, he has sent confidential reports of the employees working under him and who, were due for increments (Ex. M. 12). He has

recommended that the increment due to one Puttiah may be postponed for two months (Ex. M. 12-A). He has also recommended that the increment due to one Hanumantharao may be postponed by one month (Ex. M. 12-B). These facts also show that Narayanan was holding a really responsible position. He has himself produced the three documents at Exts. W. 5, W. 6 and W. 7. They appear to be remarks made by a higher offiical. In Ex. W. 5 it has been said that "Bonda and Idli" were alright and the standard should be kept up. In Ex. W. 6 it has been written that the "Wada" was tough and "Upma" was all right. In Ex. W. 7, meant for Narayanan it has been said that the "Uppittu" was good and the "Bonda" which was better, was still oily. It has also been remarked therein that all the drums kept behind the dining tables had to be kept away and that it was reported that it was smelling too much. Ex. W. 8 is the letter written by the Management to Narayanan on 20th October 1963 appreciating the valuable services rendered by him on the occasion of a sudden tool down strike by the workmen.

30. It appears that Narayanan's work was appreciated by the Management for some time at least, after he joined service. His service card, which he has admitted, is at Ex. M. 17. He joined on 24th November 1962 on a salary of Rs. 260 which was raised to Rs. 312 from 1st June 1963. The next increment was due to him on 1st June 1964, in the normal course. It was however postponed by two months "for unsatisfactory work". The increment next to it was due on 1st June 1965 but it was postponed by one month for "unsatisfactory work". For the same reason, it was postponed for one month more on 1st July 1965 (*Vide* Ex. M. 17-A). The entries at Ex. M. 17 are based on the remarks appearing in the confidential reports of the Departmental Heads produced at Ex. M. 19.

31. Narayanan has examined himself as W.W. 1. In the fairly long statement that he has made, he has not said anything to cast any reflection of victimisation or unfair labour practice on the part of the Management in terminating his services. He has also not said anything suggesting that any of the officers above him had any prejudice or grudge against him and he had any "rub" with any of them. He has, however, sworn that no chargesheet was served on him by the Management at any time between the dates of his appointment and termination and no warnings too had been given to him at any time during the same period. He has not stated anywhere in his deposition as to why the Management terminated his services. His only complaint appears to be that his services were terminated by the Management to appoint another high salaried officer in his place. In his chief-examination as well as cross-examination, he has denied that there were any complaints from the employees against him in the canteen service for which he was responsible.

32. Admittedly there is a canteen committee in the MICO establishment. This Committee consists of an equal number of employees' represetatives and Management's representatives. Matters pertaining to the canteen are discussed and suggestions made, at such meetings. It was the duty of Sharma and Narayanan to carry out the suggestions made at such meetings, if they were approved by the management.

33. Mr. Sharma has sworn that Narayanan was not in a position to see whether sufficient articles were kept ready for service to the particular batch ; during service he was never supervising personally and co-ordinating the functions of the service staff ; he was incapable of exercising control over his subordinates ; he was also not supervising properly, the service inside the factory ; there will be no occasion for complaints from the employees for non-service or non-availability of any items, if there be a proper supervision and control on a number of occasions, there were complaints, not only from the employees in general but also from the office bearers and leading members of the first party union ; Dr. Goehrum, Mr. Gopinath and Commercial Director Mr. Vacha had to pull up Narayanan on several occasions for his unsatisfactory work and want of cleanliness in the canteen (Para 14) ; since his work was not satisfactory his increments had to be postponed ; he had personally explained to Narayanan the postponement of his increments and the reasons therefor ; these postponements of increments on three occasions, were accepted by Narayanan without even a murmur (Para 15) .

34. The other witness for the Management is Mr. Bernad (M.W. 1) . He is the Secretary of the First Party Union. In that capacity, he has even signed the claim statement. He has written the letter Ex. M. 5 to the Management on 11th November 1965, in his capacity as the Secretary of the Union, protesting against the termination of Narayanan. In that letter, he has referred to a meeting that he and some other officials had with the Management officials on the previous day, wherein the termination of Narayanan was discussed. Bernard has admitted in his deposition the meeting held on 10th November 1965. He has stated that at that meeting, the Management was represented by Mr. Martin (Technical Director) and Mr. Gopinath (the Chief Personnel Officer) and the union was represented by himself and Mr. Venkoba Rao, the Vice-President of the Union. Bernard has then proceeded to say that the two Management officials told him and Venkoba Rao that the service of Narayanan had been terminated because Naraynan was " in capable and inefficient and there were lots of complaints from the workers in the running of the canteen ". Bernard has further on stated that he and Venkoba Rao told the Management officials that " Naraynan alone can not be held responsible for the complaints but if the

Management still thought that Narayanan was inefficient and incapable, he might be transferred to some other department". In reply, Martin and Gopinath said "We can transfer Naraynan to some other department, but it would not be on the same salary that he was being paid then". They also said "if the same salary was given to Narayanan in the department to which he was transferred, then the workmen there, would grumble". Thereafter, he and Venkoba Rao suggested that Narayanan might be transferred to the Stores Department, where the salary would be more or less the same, but the Management officials said that Narayanan had no experience of that department. After this discussion, the meeting came to an end.

35. Bernard has stated that he received Ex. M. 7 in reply to his letter Ex. M. 5. Then in para 6, Bernard has stated :—

> "It is true that I had received from the workers, complaints regarding catering, cleanliness, delay in serving, etc., in the canteen and it is true that I reported them to the Management, in my capacity as the Secretary. This was in 1964 and 1965. At the same time, the Management had complained to me that there was wastage of food in the canteen."

The statement made by Bernard supports to a very great extent, the case sought to be made out by the Management. Bernard has been very fair, in his testimony. It must be remembered that he is the office bearer of the First Party Union fighting the case for Narayanan. Even such a person has stated that there were complaints in 1964 and 1965 about the unsatisfactory service in the canteen. Bernard has also been cross-examined by the learned Representative of the first party. In his cross-examination he has stated that the Union suggested the transfer of Narayanan on the same salary if the Management thought he was inefficient. To further questions in the cross-examination he has stated that neither he nor any official of the Union had written to the Management to say that Narayanan was inefficient and no resolution also had been passed in the Union that Narayanan was inefficient. But it may be noted here that Bernard has not said anywhere in his lengthy cross-examination that Narayanan was quite efficient and he was not responsible for the various complaints that were being made, by the employees against the canteen service. Naturally, Bernard can be considered as an unwilling witness. Even he has not clearned Narayanan regarding the complaints from the workers, with regard to the canteen service.

36. Then comes another incident. Narayanan has admitted that one of his duties was to collect and stock the unserviable materials in the canteen, such as plates, tumblers, etc., as scrap, for disposal. Narayanan used to collect them and keep them on the terrance as scrap. Bernard has stated that the checking up of the scrap was being done by the Management at his instance as the Secretary of the Union. One some day in the middle of 1965, the scrap collected by Narayanan was checked in the presence of Bernard and Venkoba Rao on behalf of the Union and Dr. Goehrum and Mr. Gopinath on behalf of the Management. Sharma was also present then. Sharma has stated that some good and serviceable articles were found in the scrap heaped there. Bernard has admitted this fact. Narayanan has also admitted this incident and stated that Dr. Goehrum took him to task or including good and useful things and articles in the scrap. That such a thing should happen does not speak well of the competence or capacity of Narayanan.

37. Yet another instance of the inefficiency or incapacity of Narayanan has been stated by Sharma. According to him, two important officials were scheduled to visit the MICO factory on a particular day and Narayanan was specifically asked to make catering arrangements for them in the canteen. The Commercial Director Mr. Vacha, after taking the visitors round the factory, went to the canteen with them. It was found that Narayanan had not made any arrangements for serving them with coffee and snacks, at the counter. Mr. Sharma has stated that Narayanan completely let down the Management then, inspite of previous instructions having been given to him to keep arrangements ready for serving coffee and snacks, to them. Narayanan, however, has denied this incident altogether. Sharma has stated further on that Narayanan apologised to the Management then.

38. Then Narayanan has stated that sometime in October 1965 he was taken to the Commercial Manager Dr. Goehrum; Dr. Goehrum then told him that he (Narayanan) was not efficient and hence should resign; he told Dr. Geohrum that he was working efficiently and if given an opportunity, he would explain matters; but Dr. Goehrum told him that if he did not resign, his services would be terminated. According to Sharma, however, when Mr. Gopinath noticed that Narayanan had let down the Management when the visitors had come, he told Narayanan that there was no hope of his (Narayanan) coping up with his duties and that it was high time that he (Narayanan) left the service of the Company. To this Narayanan said that he may be given another opportunity and if he committed another mistake, he was prepared to quit.

Then Gopinath told him that Narayanan may write out his resignation and keep it with him (Gopinath) and forget about and he (Gopinath) would use that letter of resignation, only if he (Narayanan) was guilty of another lapse.

39. Narayanan has spoken of another incident also. He has stated (Para 21) that on 21st September 1965, Sharma took him to the Chief Personnel Officer Gopinath at about 4-30 P.M.; Gopinath then said to him that he was not efficient and that there were lot of complaints against him and asked him to resign; he told Gopinath that he was working efficiently and if there were any complaints, he should be appraised of them and he would explain them; Gopinath then showed him a typed paper, which was purporting to be a letter of resignation and asked him to sign it; Gopinath also told him that if he did not sign the letter of resignation, then his services would be terminated. Narayanan has then stated, after this, he went back to his workspot, without signing the letter of resignation. This story about Gopinath showing a letter of resignation to Narayanan and asking him to sign on it, has been completely denied by Sharma.

40. It appears that Sharma opened three note books in 1965. They are Exts. M. 13, M. 14 and M. 15. Ex. M. 14 has been maintained by Achutan and Ex. M. 15 has been maintained by Narayanan as admitted by him. We may leave out Ex. M. 14. In Ex. M. 15 Narayanan has made various notings about the items to be prepared, complaints against his subordinates, instructions given by him, etc. There is no need to go into the details of his notings. Ex. M. 15 bears on the opening page the title "Canteen Inspection". Below it, Sharma has written to Narayanan—

> "This book must be kept with you and after perusal should be passed on to me with your comments, if any"

On the left hand side page, Sharma has made his observations and on the right hand side page, Narayanan has written his remarks. In this book, 25 pages have been written upon and of them, Narayanan has admitted only the first fifteen (15) pages. The entries in the first 15 pages cover the period from 3rd May 1965 to 28th July 1965, Mr. Sharma has noted down the lapses he found in the canteen and Narayanan has written his remarks about them. Observation item No. 5 on page 4 made by Sharma is—

> "When one seas the canteen on any morning, invariably one finds empty plates uncleaned from previous night. This invariably happens in the ladies room and staff lunch room"

Narayanan's reply to it is :—

> "III Shift Service Assistant has been instructed and this is being cleaned and kept clean in the mornings."

A few more instances of this type can be gathered from Ex. M. 13. The point to be noted is, that Narayanan has not denied any of them in his replies.

41. To the above may be added another incident. It is stated by Narayanan (Para 38) himself. He has stated that it was true that once in February or March 1965, Commercial Director Vatcha called him ; he went to Vatcha's room ; Sharma was present there ; it was not correct to say that Vatcha took him to task for poor service ; Vatcha only showed him a glass of Coffee and asked him if that was the quality of the coffee served in the canteen ; it was cold ; he told Vatcha that the quality of the coffee was good ; Vatcha said that the quality of the coffee had deteriorated and asked him to look into the matter and he promised to do so.

42. From the evidence discussed so far, we do find that the service at the canteen, under the direct Management of Narayanan was not satisfactory. The workers were complaining about the service, as stated by Bernard. The higher officers were obliged to call Narayanan and tell him to his face that his service at the canteen were not satisfactory and complaints were being received from workers. Dr. Goehrum, Mr. Vatcha and Mr. Martin felt the need of calling Narayanan and telling him about unsatisfactory work. The Management found it necessary to postpone his increments once in 1964 and twice in 1965. Narayanan has tried to explain the postponement of his increment in his own way. He has admitted that increment was normally due to him on 1st June 1964 but it was not given to him. He has stated that he asked Sharma why his increment had been postponed. Then Narayanan has stated that Sharma told him that since he had been given an increment recently, it had been postponed. This is not borne out by the records. The first increase in his pay was on 1st June 1963. No increment was given to him thereafter till 1st August 1964. Then as regards the postponement of increment in June and July 1965, Narayanan has stated that because the previous increment was given on 1st August 1964, the next one was given on 1st August 1965. This statement also can not be accepted in view of the letter Ex. M. 18 issued by the first party union itself.

43. The documents not referred to so far are Exts. W. 9 to W. 15. It appears that the state Government reduced the quota of rice that was being given to MICO factory. Consequently, the

rice served to the employees was less. By Ex. W. 9, dated 19th April 1965 the first party has protested to the Management against it. Ex. W. 10, dated 24th April 1965 is the reply of the Management to Ex. W. 9. Ex. W. 11 is a copy of the proceedings of the canteen committee meeting held on 15th November 1964, wherein some suggestions about the distribution of the available quantity of rice have been made and worked out. Exts. W. 12 and W. 15 relate to the same subject. Ex. W. 13 is the report made by Narayanan to Sharma, complaining about some kitchen staff. Ex. W. 14 is the letter written by the Management to the union on 24th August 1965. The Union has been asked to bring the complaints to the notice of the authorities mentioned therein, without entering into prolonged discussions with the members of the canteen staff. These documents have no direct bearing on the issue under discussion.

44. Now, if we take an over all picture of the entire evidence placed on record and discussed by me above, we find that the Management had a fairly large number of reasonable grounds to be of the view that Narayanan was not able to run the canteen smoothly and efficiently and he was not equal to the task. The management was never of the view that Narayanan was guilty of any misconduct. It was of the view that Narayanan was incapable and incompetent to manage the canteen of such magnitude. This view taken by the Management cannot be said to be unjustifiable and much less baseless or perverse. The evidence does not disclose any other ground or reason for the Management to think of terminating his services. Nobody can deny that it would not be a wise policy on the part of the Management to continue to keep a man in charge of the canteen, when the employees themselves were complaining against the canteen service. The case of the Union is that the Management was keen to get rid of Narayanan in order to bring another high paid officer in his place. It was suggested to Sharma (Para 28) that in May 1965, the Management had inserted an advertisement in the Deccan Herald News Paper stating that it wanted to appoint a person to be in sole charge of the canteen and calling for applications. Sharma has stated that he did not know it. The Union could have produced a copy of the Deccan Herald and proved that such an advertisement had in fact been inserted by the Management. It would have lent some support to its assertion that the Management was keen to get rid of Narayanan. But the Union has not produced it. A new person has been appointed by the Management for the canteen only on 1st July 1966, and Sharma has sworn to this fact. His oath has not been challenged. Moreover, it is admitted on both hands that the Management did offer an alternative job to Narayanan and he declined to accept it, as the salary of that post was less than what he was actually getting at the moment. This gesture on the part

of the Management would suggest firstly that it was not keen on getting rid of Narayanan and secondly it was not acting *mala fide*. There are no grounds to infer victimisation or unfair labour practice in the management's act in terminating the services of Narayanan.

45. The learned representative of the Union, however, has drawn my attention to Standing Order No. 13, whereunder any act subversive of discipline or efficiency is "misconduct" and to Standing Order No. 15. where "neglect of work is also misconduct. After drawing my attention to these two standing orders, he argued that if the allegations of the management are true then, that fall under either of the two Standing Orders mentioned above, and Management ought to have charge-sheeted Narayanan, held a domestic enquiry against him and then proceeded to such orders as it deemed fit. I am, however, unable to agree with him. In capacity to do a job and negligence in doing it can not be equated. Likewise, it is not the case of the Management that Narayanan was guilty of any act subversive of discipline or efficiency. The two Standing Orders have no application to the present case.

46. Then it was urged by Mr. Krishaiah for the Union, that, the termination of Narayanan's service was punitive in nature. For this proposition, he relied on the decision in the Assam Oil Company case (1960—I—LLJ 587) Therein, the service of an employee was terminated after the employer had given her repeated intimations about her lapses in work and after telling her that the faults pointed out to her had not been corrected and that her performance of her duties was not up to the standard required. In effect, the discharge was for incompetence. The termination was set aside on the ground that it was punitive in nature. But if that was the only ground for termination, then, I could have accepted the arguments of Mr. Krishnaiah. But we find the following observations at page 591 of this report :—

> "The evidence given by Mr. Gowan on the whole appears to be straight forward and it leads to two conclusions :—
>
> 1. that Mr. Gowan was thoroughly dissatisfied with the work of Miss Scott ;
> 2. that he did not approve of Miss Scott's conduct in joining the Union.
>
> Since the latter circumstances has at least partially weighed in the mind of Mr. Gowan in terminating the services of Miss Scott, it must be held that the termination is not justified. It would not be open to an employer to dismiss his employee solely or principally for the reason that he or she had joined a Trade Union."

From this decision, therefore, it can not be inferred that termination on the ground of mere incompetence has been held to be punitive. On the other hand, a more recent decision of the Supreme Court suggests the contrary. It is reported in Tata Oil Mills Co., *vs.* Their Workmen, reported in 1965 (2) LLJ 602. Therein the employer was Tata Oil Company and the employee was one Banarjee. The Manager of the Calcutta Office of the Company, to whom Banarjee was a subordinate was of the view that Banarjee was not working satisfactorily as a salesman. He also found that Banarjee had made a false report to the Company. Banarjee's explanation was called for. The Manager of the Calcutta office did not find it satisfactory. Thereupon the Company discharged Banarjee from service under one of its Standing Orders, without chargesheeting him or holding any domestic enquiry. When the termination was challenged by raising an industrial dispute, the Labour Court made an award directing the reinstatement of Banarjee. The Supreme Court set aside the Award, holding that the termination was a discharged simpliciter and it was not tainted with any *mala fides*, victimisation or unfair labour practice. Making a false report to the employer is, by any standard, a gross misconduct. Even then, the case of the employer of a discharge simpliciter, has been accepted. The observations in A.C.C. Ltd., *vs.* Sharma (1965 I LLJ 433) support the same view, to some extent.

47. Another question that arises in all such cases is whether the subjective satisfaction of the employer that his employee is inefficient or incompetent is sufficient to discharge him or whether it is incumbent on the employer to prove his incompetency or inefficiency objectively by leading evidence in this court. When this question was posed by me to Mr. Krishnaiah, he urged that the employer must prove it by leading evidence in the court and in support of his argument he relied on the decision of the Supreme Court reported in L.I.C. of India *Vs.* Sunil Kumar Mukherjee (1964—I LLJ 442). After going through this decision carefully, I think that it does not cover the question posed and does not support Mr. Krishnaiah.

48. After carefully considering the entire evidence placed before me, I am of the view that order passed by the Management terminating the services of Narayanan is not *mala fide* nor punitive nor trained with a spirit of victimasation nor amounts to unfair labour practice. It is a discharge simpliciter, passed in the *bona fide* exercise of a management function, under a certified Standing Order. I would, therefore, record my finding on the first issue against the first party Union. It follows that the aggrieved workman Narayanan is not entitled to be reinstated. Hence, I record my finding on the second issue accordingly.

49. In the result, therefore, I make an Award as follows :—

AWARD

The Reference is rejected. The demand made by Sri J. V. Narayanan and the first party union on his behalf, for his reinstatement is also rejected. Parties do bear their own costs.

(Sd.) P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

"Copy"

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Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 31st August 1967.

S.O. No. 1813.—WHEREAS by State Government Order No. LMA 190 LLD 66, dated 23rd May 1966, the Industrial Dispute between the Workmen and the Management of M/s. Motor Industries Co., Ltd., P.B. No. 93, Bangalore-1, was referred to the Labour Court, Bangalore, for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Centrol Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said awad as above, in the *Mysore Gazette.*

[No. LMA 190 LLD 66.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,
Under Secretary.